

**MINUTES
THE REGULAR MEETING
EMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5493**

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., April 8, 2008 in Sacramento, with Chair Rick Rice presiding.

2. Roll Call: Members

Present

Absent

X

X

X

x

X

x

x

3. Approval of the Minutes:

The March 11, 2008 minutes were approved by all members present.

4. Chair's Report:

Chair Rice reported that Vice Chair Aguiar had an emergency that prevented him from attending the meeting today.

Member Carbaugh referred to the March 11, 2008 minutes, page 4, and asked for clarification of Chief ALJ/Executive Director Arcellana's comment that CUIAB is considered a part of EDD, in the context of the need for judicial autonomy.

Chief Counsel Hilton responded that organizationally, under the statutes, CUIAB is a part of EDD, as compelled by the “single state agency” requirement under federal law for the purpose of receiving grant funds. At the same time the statutes recognize that the judicial function of the CUIAB is completely autonomous from EDD.

Chair Rice reported he received information that a letter is forthcoming in response to the Agency's request for an audit, advising us as to the acceptance of the request and a start date for the audit.

Chair Rice expressed appreciation to Julie Krebs for the wonderful job she has done for Appellate Operations (AO), and welcomed Bill Roehr who will be joining us as Acting Deputy Chief ALJ for AO. Members Richardson, Montañez, Egan, and Carbaugh echoed Chair Rice's comments.

5. Board Member Reports:

There were no Board Member reports.

6. Chief Administrative Law Judge/Executive Director's Report:

Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the Department of Labor has advised that the appropriation for UI operations for FY 08-09 will be reduced by \$79.4 million nationwide. California's share of that reduction could be as high as \$30-31 million, depending on our workload and the "base" vs "overbase" budget allocations.

Chair Rice asked if there is any way for us to weigh in on the base allocation. Chief ALJ/Executive Director Arcellana replied that EDD has input in that regard, and is working on the issue.

On the State budget side, the Governor has issued an Executive Order requiring a 1.5% reduction in all general fund obligations. CUIAB's general fund obligation was \$560,000, so our reduction amounts to \$7,000, however, CUIAB committed to \$232,000, which we expect to meet.

Chief ALJ/Executive Director Arcellana reported that the LSS1 statewide meeting was held this week. This is a technical meeting with discussions on numbers, calendaring, registrations, workload issues, facilities, equipment and operational issues

Chief ALJ/Executive Director Arcellana reported that PALJ Hugh Harrison is back East performing quarterly reviews for the Department of Labor. PALJ Harrison took the opportunity to meet with Dale Ziegler to discuss the perceived reporting discrepancies and our workload reduction plan.

Chief ALJ/Executive Director Arcellana also reported that the Agency will be conducting the ALJ promotional exam this month. There were 28 applicants. Minimum qualifications are five years as an ALJ I if you do not have a California bar license, and two years if you do have a California bar license. In terms of hires, two judges were hired last month, one in San Francisco and one in Orange County. In addition, one judge has retired, and another announced his retirement.

PALJ Tim McArdle and ALJ Linda Fitzgerald will be speaking at the Unemployment Insurance Seminar for School Employees. The seminar is co-sponsored by EDD for the purpose of training HR staff to administer the UI program and represent their employers at hearings.

A workload report for the month of March was distributed. (Attachment A) It gives side-by-side comparisons between February and March. The field registered 25,443 UI cases, the highest level ever for this Agency and 18% higher than the average for each month last year.

7. Branch Reports:

a. Executive Director/Chief Administrative Law Judge Jay Arcellana reported that the great news for dispositions is that the field disposed of 29,555 UI cases, the second highest month in the history of the Agency. The most significant achievement is the reduction in the balance of open cases, 4,000 in UI and 3,700 total cases. The overall open balance of 45,119 cases is the lowest in 6 months.

The case age "mean" number improved from 43 to 45, while the "median" improved from 38 to 32. The time lapse performance has, however, improved only very slightly so far. The program and the work reduction are all moving in the proper direction here. This is reflected in the number of untyped decisions in the decision typing pool. We normally average roughly 1,000 cases in any week, while currently we are at 850 cases. The typing production is critical for time lapse, because even if the judges hear and decide the cases, we still need to get them through the system and out the door to meet those deadlines.

Member Richardson asked if 45,000 open cases is a low and if we ever have been in that low level before, to which Chief ALJ/Executive Director Arcellana responded in the affirmative, but added that we haven't been at this level in the past couple of fiscal years.

Member Richardson also inquired if we can get a one-year snap shot, two months comparison. Chief ALJ/Executive Director Arcellana said that he will prepare a one-year document that will show where we were before we started the work reduction plan, with the gains made.

Chair Rice commented that this is great progress.

Member Montañez asked if there has been an increase in the numbers of appeals to the Board. Chief ALJ/Executive Director Arcellana replied the appeal rate still remains somewhere between 5-6%, but we should see an increase given the number of cases being heard at the lower level.

b. Jehan Flagg, Special Assistant, Communications and Internal Affairs, reported that the Attorney General's Office will once again be conducting a one-hour workshop presentation on progressive discipline at the LSSI meeting, followed by an in-house session on how to conduct employee evaluations.

Special Assistant Flagg also reported that there was a major breach in confidential information, and it signifies a need to pause, regroup, and evaluate how we conduct our IT and information security affairs internally. It appears that two

backup tapes from one of our regional offices in Southern California are missing, possibly through the mail service, and those tapes contain approximately 5400 items of personal information, such as social security numbers (SSN) and employer ID numbers. The Agency is in the process of sending out notification letters to individuals whose information was potentially compromised, with information about protective measures that can be taken.

Chair Rice added that he has spoken with Chief ALJ/Executive Director Arcellana about the issue and the need to conduct an intensive search to determine whether or not those tapes are really missing from the Agency's control, or simply misplaced within one of our offices.

c. Acting Deputy Chief ALJ, Appellate Operations Julie Krebs thanked the Chair, Board Members, Executive Director Arcellana, and AO for their support and assistance during her recent stint in AO. She also thanked the eight AO judges who volunteered to hear cases in the field to contribute toward the workload reduction effort.

Acting Deputy Chief ALJ Krebs reported that case aging dropped from 45 days in February to 34 days; the standard is 40 days. She further reported that 1,620 cases were registered, 6% over the same month in 2007, and 1542 cases were closed, a 40% increase over March 2007. There is now a balance of 1862 cases. In looking at possible trends, during the past fiscal year registrations were 23% over the fiscal year average and dispositions are 18% over the fiscal year average.

d. Deputy Director, Administrative Services Branch, Pam Boston reported that Personnel recently has received 44 position actions to fill vacant positions.

Deputy Director Boston also reported that Personnel distributed the Student Assistant Handbook, and feedback has been positive.

Deputy Director Boston further reported that they are seeking budget approval for "Monster Track", a popular internet site for recruitment.

Lastly, Deputy Director Boston reported that the Emergency Response Plan for Venture Oaks has been distributed, and there will be an unannounced fire drill in the near future.

e. Deputy Director, Planning and Program Management Branch Mary Walton-Simons reported that Budget Call Letters from every branch have been received. Those call letters should reflect any anticipated expenditures for FY 08-09, including positions and operating expenses and equipment. The Budget Advisory Committee will meet to consider those call letters at the end of April.

As a follow-up to the Department of Labor report, Martha Diaz and Joyce Bernatzke of the PPM Branch are scheduled to receive hands-on training at EDD

this month in order to access the Department of Labor system. This means that we will now be able to input our own numbers.

Deputy Director Walton-Simons further reported that the P&PM Branch has been monitoring the workload in each appeals office so that it can provide each PJ and LSS with data reports to assist them in addressing backlogs. They have also been providing high workload offices with staff to process the cases.

Finally, a revised and streamlined incident report form has been released that should make the reporting of security breaches considerably easier.

Chair Rice asked how we were able to convince EDD to allow us to enter our own Data, and who should we congratulate. Deputy Director Mary Walton-Simons responded she thinks PALJ Hugh Harrison played a part, but she wasn't sure.

8. Chief Counsel's Report:

Chief Counsel Hilton reported that there are currently 169 court cases. In March five new routine writ cases were filed and served, while we know about one significant case that was filed but not yet served on the Board. That action is by CRLA, which is challenging the manner in which EDD and CUIAB handles identity cases. Only EDD has been served to date. The basic contention of the lawsuit is that EDD disqualifies claimants for failure to properly prove their identity, when there are other means of verification available to EDD that could avoid the initial disqualification and unnecessary appeal that follows to properly resolve the issue. For the CUIAB's part, we have recognized some of the unique issues involved in these cases, and have taken steps to expedite their resolution, sometimes even without the necessity of going to hearing.

Chief ALJ/Executive Director Arcellana added that we screen the cases at the outset. The good thing is that if we get the appropriate information quickly the Department may still issue a re-determination, which means the claimant doesn't have to wait as long. If there is no time for re-determination, then the case must go to hearing. We have expedited these cases the best we can.

Chief Counsel Hilton stated he understands that after filing the lawsuit, CRLA and EDD have gotten together to talk, and they may be able to settle the case without the necessity of going to trial.

Chief ALJ/Executive Director Arcellana stated that this case reflects one of the big concerns of the Department of Labor, because they could not understand where "other issues" category of cases is coming from, and this is one of those types of cases.

Chief Counsel Hilton reported that four cases were closed during the month of March, with three of them affirming the Board, and one reversing. The reversal was an unusual case involving a long-term employee who was unable to get his work

authorization renewed. The employer had to let him go, and the Board held it to be a constructive voluntary quit. The Court reversed without any explanation.

Finally, Chief Counsel Hilton reported that the Board workload increased from 13.5 cases/day (per Board Member) in February to almost 15 cases/day in March.

9. Unfinished & New Business:

Appeals Board Policy No. 19, relating to delegated authority generally, and associated reorganization of reporting relationships

Chief Counsel Hilton explained that the Members' meeting packets contain proposed Policy 19 (Attachment B) that was prepared by the Committee assigned to the project: Member Richardson, Special Assistant Jehan Flagg, PALJ Tim McArdle and himself. The Board also requested a side-by-side comparison between the existing (but currently suspended) and the proposed policy, which is also in the Members' packets. (Attachment C) Proceeding from the first column are the UI Code provisions that lay the legal foundation for the Board's delegation authority. Next is the Attorney General's (AG) opinion, which interprets the code to restrict delegation over the field solely to the Executive Director/Chief ALJ. Under existing Policy 19 the Chair was delegated all but certain reserved authority, some of which he/she in turn delegated to the Executive Director/Chief ALJ with respect to field operations, and to the Deputy Director for Appellate Operations with respect to appellate matters. There was no further delegation by the Chair with respect to the other two branches, P&PM and Administration. In actual practice which had evolved over time, however, the Chief ALJ/Executive Director exercised authority over all of the branches. Under the proposed policy the Board delegates authority for day-to-day operations to the Chief ALJ/Executive Director for field operations, and everything else to the Chair, but permits the Chair to further delegate as desired. There is still reservation to the Board as a whole over essential items such as appointment or termination of the management team, budget, labor negotiations, office location, and policy statements.

The proposed policy also eliminates the majority plus one vote requirement for removal of the Chief ALJ/Executive Director, in accord with the practice of other California boards and commissions, and consistent with other CUIAB management positions, including the Chief Counsel.

Member Carbaugh asked for clarification regarding majority votes. Chief Counsel Hilton responded that the rule is majority of those present as a quorum.

Member Montañez asked for clarification as to whether Chief ALJ/Executive Director Arcellana retains control of field operations and the Chair has authority over the rest of the Agency, including P&PM, Administration, and AO, to which Chief Counsel Hilton responded in the affirmative.

Member Carbaugh mentioned that there are two Governor appointees, and asked if the Board also would have discretion in hiring/firing them. Chief Counsel Hilton confirmed there are two such appointees, Special Assistant Flagg and Special Assistant Sal Cannella, both of whom report directly to the Chair under the proposed policy, but any hiring/firing actions must be approved through the Governor's Office. Under the existing policy Assistant Sal Cannella has been reporting to Executive Director/Chief ALJ Arcellana.

Chief Counsel Hilton commented that the proposed policy does not necessarily mean that the Chair isn't going to decide to delegate some or all functions to individual Branch Deputy Directors; that is up to each individual Chair. The proposed policy gives the Chair that option. After the organization has been operating under the new policy for a while, and the Chair gets a feel for things, he/she can then decide which, if any, matters should be retained and which ones can be delegated.

Member Figueroa asked whether the Chair would have more responsibilities i.e. travel, hiring, office locations. Chair Rice responded that it would be more along the lines of day-to-day communication with Senior Staff.

Member Figueroa questioned whether Chief ALJ/Executive Director Arcellana will be going to various field offices. She stated she does not think that it can be done just by one person.

Chief ALJ/Executive Director Arcellana said that this policy will give him more time to get out to the field offices. He also commented that the policy is unclear as to whether the Board retains authority over office outstations. He stated that it's important to move quickly on some of these outstations because of lease considerations, citing West Covina as an example where we are about to get out of an outstation and get into an EDD facility in West Covina in short order. Chief ALJ/Executive Director Arcellana said that had we waited for the Board to meet, review, and decide on the matter, it would probably have taken 3-4 Board Meetings, dramatically delaying the process.

Member Carbaugh suggested adding a sentence in the proposed Policy 19 that the Board would delegate to the Chair the authority on outstations.

Chair Rice asked how many outstations we have, to which Chief ALJ/Executive Director Arcellana responded that we have over 100.

Member Carbaugh further suggested that when the Board delegates the authority to the Chair on office locations, the Chair should work closely with Chief ALJ/Executive Director Arcellana on this issue and report to the Board. Member Montañez concurred with Member Carbaugh's suggestion.

Member Richardson further commented that outstations are critical to serving the end users of the Agency and she likewise agrees with Member Carbaugh's recommendation.

Member Montañez moved to include changes and add the sentence per Member Carbaugh's recommendation.

Chair Rice took the vote for Policy 19 based on the changes stated above. The Board voted unanimously to adopt Policy 19, with the changes regarding outstation matters as discussed above.

Chair Rice asked when Policy 19 would take effect and Chief Counsel Hilton replied as of that day.

Member Figueroa questioned if the new policy changes Executive Director Arcellana's compensation. Chair Rice responded he does not think so.

Chair Rice indicated that he will be working closely with Executive Director Arcellana. Chief ALJ/Executive Director Arcellana added that he needs to work closely with the Chair since the support branches report to the Chair, but support branch matters usually impact the field.

10. Public Comment:

None

11. Closed Session:

The Board went into closed session. No votes were reported.

Adjournment

FIELD OPERATIONS

		<u>FEBRUARY 2008</u>	<u>MARCH 2008</u>
<u>WORKLOAD</u>			
Registrations			
	UI TL	20,982	25,443
	DI	1,470	1,661
	Ruling & T-R	314	332
	Tax	277	202
	Other	50	64
	Total	23,093	27,702
Dispositions			
	UI TL	22,903	29,555
	DI	1,477	1,506
	Ruling & T-R	349	159
	Tax	147	117
	Other	63	40
	Total	24,939	31,377
Balance - Open Cases			
	UI TL	40,635	36,471
	DI	2,586	2,738
	Ruling & T-R	2,698	2,870
	Tax	2,869	2,953
	Other	63	87
	Total	48,851	45,119
<u>CASE AGE</u>			
Average Days	UI (mean)	43	35
Average Days	UI (median)	38	32
>90 Days Old	UI	7%	2%
>90 Days Old	w/out Multis	7%	2%
>90 Days Old	DI	15%	12%

APPEALS BOARD POLICY STATEMENT NO.19—DELEGATION OF AUTHORITY

It is the policy of the Appeals Board to delegate authority for certain day-to-day operations of the California Unemployment Insurance Appeals Board (CUIAB), and to retain authority for all other matters, including and without limitation, policies and matters of agency-wide impact. Examples of policies and matters over which the Appeals Board shall retain authority includes:

- Appointment or termination of the Executive Director/Chief Administrative Law Judge for Field Operations, Chief Counsel, Chief ALJ for Appellate Operations, all Deputy Directors and CEAs. Appointments and terminations made pursuant to this paragraph shall be made by a majority vote of the Appeals Board.
- Approval of an Annual Budget Plan
- Labor Negotiations and Positions
- Policy Statements
- Office locations, including but not limited to leasing new office locations and closing existing office locations.

In accordance with the abovementioned policy, the Appeals Board makes the following delegations of authority:

The Executive Director/Chief Administrative Law Judge for Field Operations shall appoint, direct, and control the activities of the administrative law judges and their staff working at the first level of appeal, provided, however, that the Executive Director/Chief Administrative Law Judge shall work closely with the Chair of the Board, and shall provide reasonable written advance notice to the Chair of any significant personnel or operational actions or decisions.

The Chair of the Board shall be responsible for the appointment, direction, and control of the activities of all other staff of the CUIAB, including those in Appellate Operations, the Administrative Branch and the Planning and Program Management Branch; and shall report any significant action taken at the next regularly-scheduled meeting of the Appeals

Board. The Chair may make further delegation of such conferred authority herein to a designee or designees. Officers to whom such authority has been delegated shall work closely with the Chair of the Board, and provide reasonable written advance notice to the Chair of any significant personnel or operational decisions.

Notwithstanding the delegations of authority herein, the Chair may ask for a vote of the Appeals Board on any matter at his/her discretion.

In the event the position of Chair is vacant, the Vice-Chair shall stand in the place of the Chair under this policy.

Board Policy 19-Comparison of Delegations of Authority

U.F. Code secs. 401, et seq.	AG Opinion	Suspended B.J. Policy 19	Actual practice prior to suspension of Policy 19	Proposed B.J. Policy 19 (Complies to AG op and U.F. Code)
The Board may delegate its appointing authority to authorized deputies or agents	The Board has authority to delegate to others matters concerning CUIAB, but <u>may not</u> delegate control over Field Operations to anyone other than the Chief ALJ/ExDir.	The Board delegates all appointing authority, except for those powers specifically reserved, to the Chair. (This delegation violates the AG Opinion which does not allow delegation of authority over Field Operations to anyone but the Chief ALJ/ExDir.	The Chief ALJ/Ex Dir had appointing authority over entire agency, including Field Operations, Appellate Operations, P&PM and Administrative Services.	The Board delegates authority for day-to-day operations of CUIAB to Chief ALJ/Ex Dir over Field Operations, and to Chair for remainder of agency. Permits further delegations by Chair.
All personnel of the CUIAB <u>shall be</u> appointed, directed and controlled only by the Board or its authorized agents to whom it delegates authority	No discussion of appointments and terminations of Senior Staff, including Chief ALJ/ExDir	The Board retains authority to appoint all Senior Staff: Chief ALJ/ExDir, AO Chief, Chief Counsel, and Deputy Directors. Chief ALJ/Ex Dir may be removed only by a <u>majority plus one vote</u> of the Board. (No precedent in any other agency).	Board has not voted on any Senior Staff appointments in at least 7 years, including the appointment of prior Chief of Appellate Operations.	The Board retains authority over appointments and terminations of all Senior Staff and CEAs. Appointment and Removal is by a simple majority vote of the Board.
The Board is charged with preparing the budget.	The Board is charged with preparing the budget	The Board retains authority over: <ul style="list-style-type: none"> • Budget • Labor negotiations • Policy statements • Office locations 	Matters relating to <ul style="list-style-type: none"> • Budget • Labor negotiations • Policy statements • Office locations were presented to the Board for information, discussion, or amendment. Votes were generally not requested, except for Policy statements.	The Board retains authority over: <ul style="list-style-type: none"> • Budget • Labor negotiations • Policy statements • Office locations

Board = 7 Member Officers; CUIAB = Entire Agency